IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2378 of 2005

Date of Decision: 8.10.2007

Mrs. Vinod Shakti Gupta ...Petitoner

Vs.

Punjab Scooters Ltd. & Anr. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Arun Palli, Senior, Advocate,
with Mr. Jai Bhagwan, Advocate,
for the appellant.

Mr.P.K.Mutneja, Senior, Advocate,
for respondent No.1.

Vinod K.Sharma, J. (Oral)

This revision has been filed against the order passed by the learned Civil Judge (Junior Division), Nabha vide which application moved by the petitioner under section 151 of the Code of Civil Procedure (for short the Code) has been ordered to be dismissed.

Plaintiff-respondent has filed a suit for recovery against the petitioner as guarantor and her son as principal debtor for recovery of an

agreed amount for the breach of terms of the contract entered into between the parties i.e. employer and the employee.

In the said suit the plaintiff moved an application under Order 10 Rule 1 and Order 12 Rule 2 of the Code for admission and denial of the documents. Reply to the said application was filed by the petitioner on 9.6.1999 and in para No.2 of the preliminary objections the petitioner averred as under under:-

> "2. That it is the matter of record that defendant No.1 was proceeded against ex parte and the case is being only contested by defendant No.2. The defendant No.2 has already in her written statement clearly narrated the details how and in which manner the documents were prepared. The defendant No.2 put her signatures on the documents as prescribed by the plaintiff Co. in the form of terms and conditions The defendant No.2 had never taken any oath before the office of Executive Magistrate, Nabha on the alleged dates. As such, needless to add that the execution of the documents is the result of coercion and undue influence."

As the son of the petitioner was proceeded against ex parte, the application moved by the plaintiff for admission and denial of documents was disposed of on 24.7.1999 by observing as under:-

> "2. Defendant No.2 has submitted the reply to the application wherein defendant No.2 has admitted the

> execution and her signatures on the documents. As far as the question of application qua defendant No.1 is concerned. Defendant No.1 has already been proceeded against ex parte. So, as such when defendant No.2 has admitted the execution of the documents and defendant No.1 is not before the court, the only recourse left open is for the plaintiff to prove its case by leading of his evidence. So the application is accordingly disposed off and case is fixed for evidence of the plaintiff."

As the petitioner was not being allowed to cross-examine the witnesses produced by the plaintiff to prove her allegation of coercion and undue influence an application was moved by the petitioner under section 151 of the Code for correction of order dated 24.7.1999 on the ground that the same was being misinterpreted by the learned trial court to mean that the petitioner has admitted the execution and signatures on the documents and therefore, it was not open to her to raise the plea of coercion and undue influence now.

It is by way of impugned order that the said application has been rejected by the learned trial court by observing that the application was not maintainable as the petitioner has not challenged the order passed on 24.7.1999 and further on the ground that there was no apparent mistake on the part of the court in passing the order. It was also held that the application so moved was not competent.

Learned counsel for the petitioner contended that the impugned order cannot be sustained inasmuch as the order dated 24.7.1999 has been misinterpreted to mean that there was admission of execution and signatures. Rather the petitioner has taken a specific plea that though the documents were duly signed in the proforma prescribed by the plaintiff-respondent but the same was the outcome of undue influence and coercion, therefore, her consistent stand was that the guarantee deed executed by her was the outcome of undue influence and coercion. From the reading of the reply filed by the petitioner to the application it is clear that there was no clear admission as is being interpreted by the learned trial court in not permitting, the petitioner, to cross-examine the witnesses of the plaintiff on the plea of coercion and undue influence.

Whatever, may be the merit of the case the party cannot be prevented from putting up the set up case in the written statement by way of misinterpreting the order. As a matter of fact, from the combined reading of the order and the reply filed it has to be held that the conclusion drawn by the learned trial court that there was admission of execution and signatures was not correct. As a matter of fact, necessity of moving application arose because of the fact that the court did not permit the petitioner to cross-examine the witnesses being produced by the plaintiff on account of misreading of the order dated 24.7.1999.

However, as by way of impugned order the court has interpreted the order dated 24.7.1999 to mean that the petitioner cannot

raise the plea of coercion and undue influence the impugned order cannot be sustained which is accordingly set aside and the revision petition is disposed of by observing that the order dated 24.7.1999 nowhere restricted the right of the petitioner to prove her case as set up in the written statement.

Revision disposed of.

8.10.2007 **(Vinod K.Sharma)**
rp **Judge**